

Docket No.: 345288015US
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Strub et al.

Confirmation No. 8261

Application No.: 10/764,309

Art Unit: 2621

Filed: January 22, 2004

Examiner: Robert Chevalier

For: LOW ATTENTION RECORDING, WITH
PARTICULAR APPLICATION TO SOCIAL
RECORDING

APPLICATION FOR PATENT TERM ADJUSTMENT RECONSIDERATION
UNDER 37 C.F.R. § 1.705(D)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant requests reconsideration of the patent term adjustment indicated in the Issue Notification of March 25, 2009.¹ This Application is supplemental to an Application for Patent Term Adjustment Reconsideration Under 37 C.F.R. § 1.705(B) filed on March 4, 2009.

(1) The fee set forth in 37 C.F.R. § 1.18(e) was paid on March 4, 2009. Please charge any deficiencies or credit any overpayment to our Deposit Account No. 50-0665, under Order No. 345288015US from which the undersigned is authorized to draw.

¹ Applicant's representative, Maurice Piro, discussed issues relating to the filing of this Application with Mr. Kery Fries of the U.S.P.T.O. on November 20, 2008. Mr. Fries advised that applicant may wait until the time of issuance and file an application under 37 C.F.R. § 1.705(d), rather than file an application under 37 C.F.R. § 1.705(b). (See, also, "Decision Holding PTA Request in Abeyance Until After Issue Date," U.S. Patent Application No. 10/274,829, Jan. 30, 2007.)

(2) Statement of Facts

(i) Correct Patent Term Adjustment and Bases for Adjustment

The correct patent term adjustment is 1437 days. The PTO's calculated patent term adjustment is 943 days. Applicant is entitled to an additional 494 days of patent term adjustment.

The PTO properly accounted for the delay under 35 U.S.C. § 154(b)(1)(A), referred to as the "A delay." The A delay is 990 days.

The PTO failed to properly account for the delay under 35 U.S.C. § 154(b)(1)(B), referred to as the "B delay." The B delay is 813 days.

The PTO failed to properly account for the overlap under 35 U.S.C. § 154(b)(2)(A) in the A delay and the B delay. The overlap is 319 days.

The PTO properly accounted for the reduction in patent term adjustment under 35 U.S.C. § 154(b)(2)(C). The reduction is 47 days.

The correct patent term adjustment is the sum of the A delay and the B delay minus the overlap and minus the reduction. Thus, the correct patent term adjustment is $990+813-319-47$, which is 1437 days.

(ii) Relevant Dates

A Delay		
Filing Date + 14 Months	3/22/05	↓
First Office Action	12/7/07	990
Total		990

B Delay		
Filing Date + 3 Years	1/22/07	↓
Issue Date	4/14/09	813
Total		813

Overlap		
36-Month Date	1/22/07	↓
First Office Action	12/7/07	319
Total		319

Reduction		
Office Action	1/23/08	↓
Reply to Office Action	5/22/08	29
Office Action	9/5/08	↓
Reply to Office Action	12/23/08	18
Total		47

(iii) Terminal Disclaimer

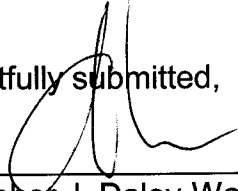
The patent is not subject to a terminal disclaimer.

(iv) Failure to Engage in Reasonable Efforts

Applicant is not contesting the reduction in patent term adjustment of 47 days as accounted for by the PTO that are "deemed" to be a failure to engage in reasonable efforts under 37 C.F.R. § 1.704. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application under 37 C.F.R. § 1.704.

Dated: May 6, 2009

Respectfully submitted,

By 
Christopher J. Daley-Watson
Registration No.: 34,807
PERKINS COIE LLP
P.O. Box 1247
Seattle, Washington 98111-1247
(206) 359-8548
(206) 359-4265 (Fax)
Attorney for Applicant